APPEAL NO. 010281

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On January 16, 2001, a contested case hearing was held. With respect to the issues before him, the hearing officer determined that the appellant (claimant) reached maximum medical improvement (MMI) on July 21, 1999, with a zero percent impairment rating (IR). In his appeal, the claimant argues that the hearing officer erred in giving presumptive weight to the designated doctor's certification of MMI and IR and requests that additional evidence, which was attached to the appeal but not offered into evidence at the hearing, be considered. In its response, the respondent (carrier) urges affirmance. Subsequent to filing his appeal, and after the deadline for filing an appeal, the claimant submitted additional records for consideration.

DECISION

Affirmed.

In reviewing the hearing officer's decision, we will only consider the evidence admitted at the hearing. Generally, the Appeals Panel does not consider evidence not submitted into the record and raised for the first time on appeal. Texas Workers' Compensation Commission Appeal No. 92255, decided July 27, 1992. To determine whether evidence offered for the first time on appeal requires that a case be remanded for further consideration, we consider whether it came to the appellant's knowledge after the hearing, whether it is cumulative, whether it was through lack of diligence that it was not offered at the hearing, and whether it is so material that it would probably produce a different result. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). We do not find that to be the case with the report that the claimant attached to his appeal, which was not admitted in evidence at the hearing and is dated prior to the date of the hearing. The additional records which the claimant submitted after the deadline for filing an appeal will not be considered as they were not filed timely.

The hearing officer did not err in giving presumptive weight to the designated doctor's certification of MMI and IR under Sections 408.122(c) and 408.125(e). The difference between the designated doctor's certification and that of the claimant's treating doctor is attributable to differences in medical opinion as to whether the claimant's compensable injury resulted in permanent impairment and the date that the claimant reached MMI. The treating doctor's opinion on those matters simply does not rise to the level of the great weight of medical evidence contrary to the designated doctor's report. Accordingly, the hearing officer did not err in giving presumptive weight to the designated doctor's report under Sections 408.122(c) and 408.125(e) and in determining that the claimant reached MMI on July 21, 1999, with an IR of zero percent as certified by the designated doctor selected by the Texas Workers' Compensation Commission.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Philip F. O'Neill
Appeals Judge